SUPREME COURT, U.S.

FILED

AUG 12 1957

JOHN T. FEY, Clerk

No. 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

SAX ENTERPRISES, INC.

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

LEEVLANS CORPORATION

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

R. S. LEVY, DANIEL LIFTER and J. S. LANSBURGH, as Trustee, etc., et al.

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

THOMAS JEFFERSON, INC.

PETITION FOR A WRIT OR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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PETITION FOR A WRIT OR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Hotel Employees Union, Local No. 255 (and David Herman, Clarence L. Smith, Albert H. Berlin, Henry K. Mischel, individually and as officers and agents of said Local) pray that a writ or writs of certiorari issue to review the judgments of the Supreme Court of Florida entered in the above entitled cases on March 15, 1957.

OPINIONS BELOW

The opinions of the Circuit Court for Dade County in these cases are unreported. They are reprinted in the appendix hereto. The first opinion of the Supreme Court of

Florida (entered in *Sax Enterprises* v. *Hotel Employees*) is reported in 80 So. 2d 602 (1955); the second opinion of the Supreme Court of Florida (entered in a group of cases headed by *Boca Raton Club Inc.* v. *Hotel Employees Union*) is reported in 83 So. 2d 11 (1955); the third opinion of the Supreme Court of Florida (entered in *Thomas Jefferson, Inc.* v. *Hotel Employees*) is reported in 84 So. 2d 583 (1956); the fourth opinion of the Supreme Court of Florida (entered in *Fontainebleau Hotel Corp.* v. *Hotel Employees Union*) is reported in 92 So. 2d 415 (1957); the final opinions of the Supreme Court of Florida in all of the four cases as to which certiorari is here sought were identical *per curiam* affirmances on the authority of the *Fontainebleau* case and are reported in 93 So. 2d 583-600. All of these opinions are reprinted in the appendix hereto.

JURISDICTION

The judgments of the Supreme Court of Florida in each of these cases were entered on March 15, 1957. On June 11, 1957, Mr. Justice Black ordered that the time for filing "petition or petitions for writ or writs of certiorari" be extended to and including August 12, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether the Supreme Court of Florida may, consistently with the Fourteenth Amendment as it has been applied by this Court to the prohibition of peaceful picketing, embark upon a course of decision plainly designed to prevent any picketing under any circumstances by employees engaged in an attempt to achieve union recognition and collective bargaining in the hotel industry.

2. Whether a state court may, consistently with the 14th Amendment, prohibit any publication whatsoever of the fact that a strike exists.

3. Whether Florida may, either by judicial action or by

application of its statutory law, prohibit peaceful picketing and thus regulate labor relations matters in an industry affecting commerce over which the National Labor Relations Board has refused to exercise jurisdiction.

4. Whether Florida may, under such circumstances, prohibit concerted action which is protected by Section 7 of the National Labor Relations Act.

5. Whether the Supreme Court of Florida, by repeatedly changing the rules governing peaceful picketing during the course of the litigation, deprived petitioners of due process of law in violation of the 14th Amendment.

STATUTES INVOLVED

Laws of Florida, 1943, No. 334, Ch. 21968, Fla. Stat. (1955) §§447.01-447.15, provides in pertinent part as follows:

> Section 1. **Policy.** (1) Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.
>
> (2) It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.
>
> Section 3. **Employee Rights.** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 9. **Prohibited Acts.** It shall be unlawful for any person:

. . . . . .

(3) To participate in any strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

. . . . . .

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Section 3 of this Act, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., 151, *et seq.*) provide as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

* * * *

Prevention of Unfair Labor Practices

Sec. 10. (a) The Board is empowered as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that

has been or may be established by agreement, law or otherwise. *Provided,* That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

INTRODUCTORY STATEMENT

On March 15, 1957, the Supreme Court of Florida issued 22 identical opinions affirming final injunctions against all forms of picketing by the Hotel Employees Union at 22 different Miami and Miami Beach hotels, as well as prohibiting any publication of the existence of a strike at the hotels. Each of these opinions consisted of a single sentence—affirming the injunction on the authority of the Florida court's prior opinion in *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* Fla. 92 So. 2d 415 (1957).

In 9 of these 22 cases, the underlying dispute between the employer and the Union has been settled by the negotiation of a collective bargaining agreement. Review is being sought in this Court with respect to 12 of the remaining cases. On June 11, 1957, Mr. Justice Black granted an application for extension of time in which to file a "petition or petitions" in each of these cases.

While all of the cases were briefed and argued together in the Florida Supreme Court as one case, and the final opinion of the Florida Supreme Court in each case was identical, it is believed by counsel that the presentation of all 12 cases in one petition for certiorari would be overly

complex and confusing.[1] There are 12 separate records; the findings of the trial courts are not identical in each case; in some of the cases there have been repeated reviews by the Florida Supreme Court of trial court actions on preliminary injunctions. In an effort to present the issues here to the Court in the least confusing manner, counsel for petitioners have combined, in this one petition, 4 of the 12 cases, pursuant to Rule 23(5). These four, we believe, contain the significant opinions of the Florida Supreme Court (which spoke four times on the questions presented), adequately show the sequence and history of the litigation, and present the issues sought to be reviewed here in all of the 12 cases. In separate petitions which are being filed covering the other 8 cases, we shall rely on the factual framework and the reasons for granting the writ set forth in this petition, specifying what we believe to be the relevant differences, if any.[2]

For the sake of easy identification, and to minimize confusion, the four instant cases and their records will be referred to by the name of the hotel, or an abbreviation, as follows:

Name of Plaintiff	*Name of Hotel*	*Abbreviation*
Sax Enterprises, Inc.	Saxony	Sax
Leevlans Corp.	Sans Souci	Souci
R. S. Levy, Daniel Lifter, et al.	Versailles	Vers.
Thomas Jefferson, Inc.	San Marino	Marino

[1] We recognize that Rule 23(5) of the Rules of this Court seems to permit the filing of a single petition for certiorari covering all the cases.

[2] Counsel for petitioner sought to enter into a stipulation in the Supreme Court of Florida with counsel for the respondents in most of these cases, pursuant to which only the four cases covered in this petition would be presented to this Court, the other nine to abide the result therein. Counsel for these respondents agreed in principle but asked that two additional cases be presented to this Court. We agreed. But we have been unable to obtain from counsel for those respondents execution of a stipulation which would accomplish the agreed-upon objective.

STATEMENT OF THE CASE

Some time prior to April 1955, the Hotel Employees Union began an organizational campaign among the employees of resort hotels in Miami and Miami Beach, Florida. Unable to obtain recognition, the Union called strikes at a number of those hotels, including the four hotels involved in this petition. The striking employees set up picket lines. Among the hotels at which a strike was first called, in April 1955, were the Saxony and the Sans Souci. In each case the employer hotel filed a complaint in the Circuit Court for Dade County seeking to enjoin the picketing.

The complaints were substantially identical. The Sax complaint is typical: it alleged that the plaintiff's hotel business was lucrative, that the hotel had an enviable nationwide reputation, and that the plaintiff enjoyed the most cordial labor relations with its employees. (Sax R. 2). According to the complaint, however, "one or two carpet-bagger labor organizers arrived in Miami Beach for the purpose of stirring up labor discord by creating a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels in Miami Beach through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union." (Sax R. 3). The efforts of the two "carpet-baggers," according to the complaint, were a failure. But the organizers attempted to compel the owners of the Miami Beach hotels to recognize the union nevertheless in order to enable the union to procure membership among the employees. When the plaintiff employer refused to comply with this demand, according to the complaint, the union placed a picket line consisting of six or more pickets in front of the hotel carrying a sign alleging that the hotel had refused to negotiate with the union, which sign, the complaint alleged, was false. In addition, according to the complaint, the union called a meeting of

the employees of the hotel and induced a minority of the employees to strike and cease work. (Sax R. 5-6).

According to the complaint, the pickets congregated in front of the hotel in large numbers, accosted employees loyal to the employer and intimidated them in various ways in order to coerce them not to work.

The conduct of the union was alleged to constitute a violation of various subdivisions of Section 447.09 of the Florida Statute, 1955, regulating strikes and picketing, and a preliminary injunction was requested restraining the union from maintaining a picket line or advertising or publishing any false or scandalous statements in reference to the plaintiff's business or in any manner boycotting or injuring the plaintiff. (Sax R. 1-10).

The First Litigation Phase: Action by the Trial Courts on the Applications for Temporary Relief (April-May 1955)

The first phase of the litigation sequence was the action of the trial courts on the applications for preliminary injunction. In all of the cases two major questions seemed to be presented: (1) whether there was a sufficient showing of violence or intimidation to warrant an injunction, and (2) whether, if the picketing was peaceful, it was nevertheless unlawful under some "unlawful purpose" doctrine. Violent picketing could, of course, be enjoined. With respect to the second question, the law of Florida as of the date of the hearings seemed to be if picketing could be shown to be for the purpose of coercing an employer to coerce his employees to join a union it was unlawful. *Treasure, Inc.* v. *Hotel Employees Union,* Fla., 72 So. 2d 670 (1954); *International Typographical Union* v. *Ormerod,* Fla., 59 So. 2d 534 (1952). On the other hand, the employer's belief, however reasonable, that this was the purpose of the picketing was insufficient if there was, in fact, a different purpose. *Hotel & Restaurant Employees* v. *Cothron,* Fla., 59 So. 2d 366 (1952). Picketing by non-employees for organizational purposes (*Whitehead* v. *Miami Laundry Co.,* 160 Fla. 667,

36 So. 2d 382 (1948)) or by a union representing only a minority of the employees (*Johnson* vs *White Swan Laundry,* Fla. 41 So. 2d 874 (1949) was lawful. It was clear Florida law that the publication of facts concerning a labor dispute, whether or not true and irrespective of whether a "bona fide labor dispute" existed, could not be restrained in any manner. *Moore* v. *City Dry Cleaners and Laundry,* Fla., 41 So. 2d 865 (1949). Finally, as stated by the Florida Supreme Court, "there is no rule, regulation or law of this State which requires a notice to the employer of the reasons for an impending strike, and prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law." *Hotel & Restaurant Employees* v. *Cothron,* supra.

These cases seemed to establish the principles to be applied on the application for temporary injunctions in the Sax and Sans Souci cases. Although the cases were assigned to different chancellors of the Circuit Court, a joint hearing was held at which both parties presented evidence.

In both cases, the applications were denied. As to violence, the chancellors found in each of those cases that an insufficient showing had been made for injunctive relief on the basis of the manner of the picketing and the method in which it was conducted, and therefore denied relief on that ground without prejudice to reapplication at a later date. With respect to the allegation that the picketing, even if peaceful, was conducted for an unlawful or illegal purpose, the chancellors reserved decision until answers had been filed.

The Second Phase: Reversal by the Supreme Court of Florida (May 27, 1955)

Instead of waiting for answers to be filed and the "unlawful purpose" question to be decided, the plaintiffs sought review in the Supreme Court of Florida by writ of certiorari. On May 27, 1955, that Court, reversing the trial courts, directed that temporary injunctions issue.

The Supreme Court's opinion was issued in the Sax case. It specifically upheld the chancellor as to the finding that no violence had occurred, but held that in the absence of an answer the allegations of the sworn complaint should have been taken as true (despite conflicting testimony (Sax R. 14-336)), and that they made a sufficient showing that the picketing was for an unlawful purpose.

The Supreme Court concluded that it was clear, on the basis of these allegations, "that the real purpose of the picketing was to force the employees of the Saxony Hotel to designate the union as their bargaining agent and to coerce the hotel owners to sign contracts with the union as a basis to compel the employees to become members of the union." Picketing for such purpose was unlawful under the prior decisions of the Florida Court.

In the course of reaching its conclusion, however, the Supreme Court also seemed to set new standards for lawful picketing. It seemed to say that in order for picketing to be lawful the union (1) must establish that the employees have chosen it for their representative, (2) must inform the employer of the object to be accomplished by the picketing, (3) must afford to the employer a fair opportunity to engage in negotiations, and (4) must not express false statements as to the facts of the labor dispute.

The Third Phase: Further Hearings on the Basis of the Sax Decision (June-October 1955)

Following the Sax opinion, the trial courts, in obedience to the mandate of the Supreme Court, issued preliminary injunctions. These injunctions prohibited all picketing and the carrying of any signs or placards in the vicinity of the hotel. In addition, in a separate paragraph, they enjoined the defendants "and all affiliated organizations" "from publishing or causing to be published any statements to the effect that a strike, walkout or cessation of work is in effect at the . . . hotel, or that the plaintiff refuses to negotiate or

recognize the defendants or affiliated organizations . . ." (Sax R. 378-80; Souci R. 29.)

The union had, in the meantime, filed its answers to the complaints. The union's answers, typified by the Sans Souci answer, denied that no labor dispute existed, denied that it had never sought to negotiate with the hotels, denied that violence had existed, and denied that the picket banners were false (Souci R. 16-22). Affirmatively, the union alleged that it represented a majority of the employees, that its picketing was for the lawful purpose of seeking bargaining rights for the employees, and that any restriction on such picketing would violate the guarantee of the 1st and 14th Amendments in the U. S. Constitution (Souci R. 22-23). The union then proceeded, in the Sans Souci case and others, to file motions to vacate or dissolve the injunction.[3]

These motions came on for hearing on June 17, 1955. The union took great pains to abide by the dicta in the Sax decision. Thus, they brought into court the individual employees who had designated the union as their bargaining representative (Souci R. 147 et seq., 160-61). One of the union's organizers testified that more than a majority of the employees at the Sans Souci had designated the union as their bargaining agent (Souci R. 220). The union also presented signed applications for membership and membership cards (Souci R. 218).

The same organizer also testified that he had approached the Hotel Association (Souci R. 230) with reference to the Sans Souci, and had contacted the owner of the hotel (Souci R. 254-57, 261-62) in an attempt to negotiate and advise them of the object of the picketing. Evidence was also produced that a strike vote was taken on May 25, 1955, in which 103 out of 180 employees voted to strike (Souci R. 274).

On the basis of testimony, the trial court dissolved the

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[3] No such motion was filed in the Sax case.

injunction.[3a] The court, in its opinion, considered the application of Section 447.09(3) of the Florida Statutes (1955), which makes it unlawful to participate in any strike, walkout, or cessation of work without the same being authorized by a majority vote of the employees involved. The court first found that the requirements of this statute had been met by virtue of the strike vote taken after the strike had begun. If the fact that the strike vote was held later were regarded to be material, the court said that it would have to consider whether Section 447.09(3) was constitutional and concluded that the section was unconstitutional. (Souci R. 36-38).

The court discussed in detail the new requirements for lawful picketing which appeared to be set forth in the Sax opinion, viz., that the union must establish that the employees had chosen it as their representative, must inform the employer of the object to be accomplished by the picketing, and must afford him an opportunity to negotiate before beginning to picket. It pointed out that these requirements were contrary to the prior decision of the Supreme Court of Florida in the *Cothron* case which said that "there is no rule, regulation, or law in this State which requires notice to the employer of the reasons for an impending strike as a prerequisite to picketing." However, the court said, the picketing was lawful even under the new requirement. "There is no doubt in the court's mind that the plaintiff knew that the union desired to negotiate and that the negotiations were to be about wages, hours, and working conditions of its employees who were represented by the union . . . the plaintiff knew of the union's desire to negotiate long before the pickets were established but by the plain-

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[3a] The Supreme Court of Florida within the week issued an order that the petition for certiorari which had been filed in the second phase, on May 16, 1955—prior to the trial court hearing—should have "the force and effect of . . . a supersedeas" of the June 17 order vacating the injunction (Souci R. 315). This meant, of course, that picketing was enjoined pending further review.

tiff's evasive and stalling tactics did not intend to negotiate and refused to do so." (Souci R. 39-40).

At about the same time as the chancellor in the Sans Souci case issued his order vacating the preliminary injunction, two other judges, in the same court, had to deal with issues arising on similar complaints which were first filed during this third phase.

In the San Marino case the picketing did not commence until June 15, 1955, *after* the decision in the Sax case. The union meticulously met every requirement laid down in the Sax opinion. Thus, it advised the hotel by mail and in person that it represented a majority of the employees (Marino R. 24). It forwarded to the employer a letter from a certified public accountant that the records of the union indicated that a majority of the employees had designated it as their collective bargaining agent (Marino R. 31). It conducted a secret-ballot strike vote *prior* to picketing (Marino R. 109-111). The picketing did not commence until after all attempts at negotiation had been exhausted and, according to the evidence, the picketing was conducted "peacefully, in a gentlemanly way." (Marino R. 106).

At the hearing on the petition for an injunction the trial court found that the only difficulty was that the hotel apparently was still not satisfied that the union represented a majority of the employees. Accordingly, the court determined to appoint a commissioner to conduct a secret-ballot election. To prevent coercion from either side, it enjoined further picketing pending the holding of the election (Marino R. 134-135).[3b]

In the Versailles case the union again meticulously met

[3b] The Supreme Court promptly, on July 27, issued an order of supersedeas staying that part of the trial court's order which provided for an election. It refused, however, to stay the accompanying injunction against picketing which the trial court had issued in aid of the election order.

the prerequisites laid down in the Sax opinion (Vers. R. 21-24). There was no dispute that the employer knew that the union desired recognition. As in San Marino, the union had submitted a certified statement of its majority status (Vers. R. 21-25) and had conducted a secret-ballot strike vote. (R. 50-51). There were even some preliminary negotiations with the hotel, which bogged down when the hotel demanded the right to check the majority status of the union by individually inquiring of each employee whether or not he favored the union and refused to permit such status to be checked by secret ballot (Vers. R. 104).

On the basis of the evidence, the court in the Versailles case found that the picketing which had been in progress since June was at all times peaceful and "for the lawful purpose of inducing the employer to recognize and negotiate with the defendant's union." The court further found that the union had established that "a majority of the employees had chosen it as their representative and that the labor organization had also informed the employer of the object to be accomplished by the picketing and that a fair opportunity was afforded to the employer to engage in negotiations." The court therefore denied the application for a temporary injunction. (Vers. R. 127-28).

During this period the union filed supplemental answers in all of the instant cases, alleging that the plaintiff hotels were engaged in interstate commerce and that the state court lacked jurisdiction because Congress had pre-empted the area under the National Labor Relations Act (Sax R. 381-83; Souci R. 343-45; Marino R. 33-35; Vers. R. 56-59).[4]

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[4] During this same period the union, on June 29, 1955, filed a representation petition with the National Labor Relations Board seeking an election in the various hotels, in accordance with Section 9(c) of the Labor-Management Relations Act (61 Stat. 143, 29 U.S.C. §159(c)). This petition was dismissed, the Labor Board refusing to take jurisdiction under its jurisdictional standards. (Sax R. 554). On July 7, the union also filed unfair labor practice charges,

The Fourth Phase: The Supreme Court Again Intervenes (October 1955-January 1956)

Petitions for certiorari were again filed with the Supreme Court of Florida. And that court again reversed the trial courts.

The first opinion in this phase of the litigation was issued by the Supreme Court of Florida in October 1955. It covered six cases, including Sans Souci, in which similar findings had been made and preliminary injunctions vacated. The opinion is usually referred to as *Boca Raton Club* v. *Hotel Employees Union,* since that was the first case in the caption.

In this opinion the Supreme Court of Florida faced two problems: (1) the plain contradiction between the law of Florida prior to these cases, as expressed in the *Cothron* case, and the prerequisites for lawful picketing set forth, as dicta, in the *Sax* opinion; (2) the fact that the trial court had found that the union had met the requirements of the *Sax* opinion.

The first problem the Court met "forthrightly." The *Cothron* opinion had stated that there was no Florida law requiring notice to the employer of the reason for an impending strike as a prerequisite to lawful picketing and that the courts had no authority to create one. But, the Court now said, "although there may exist 'no rule, regulation or law of this State which requires' the foregoing prerequisites, certainly honesty of purpose, fair dealing and a

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complaining of the refusal of the hotels to bargain and discriminatory discharges in violation of Section 8(a)(3). These were also dismissed on the same basis.

The union subsequently brought suit in the United States District Court for the District of Columbia seeking to compel the Board to take jurisdiction. The District Court dismissed the complaint (Hotel *Employees* v. *Leedom*, 147 F. Supp. 306). An appeal from that dismissal is now pending before the United States Court of Appeals for the District of Columbia Circuit (No. 13,765).

sound public policy demand them." Furthermore, the Court said, Section 447.03 of the Florida Statutes gives employees the right to self-organization and collective bargaining through representatives of their own choosing and it is therefore appropriate for the courts to fix reasonable and fair prerequisites to that end.

The second question was no more troublesome to the Court. Although the union had shown that it represented some of the employees it had not shown that it had presented substantial evidence of that fact to the employers prior to the strike. "It is not sufficient," said the Court, "to establish even in court, after picketing is a reality, that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number *or, for that matter, a majority of the employer's employees.*" (Emphasis added.)

The Court concluded, therefore:

> "We hold that the picketing in these cases was begun by respondents without first having submitted to the petitioners competent substantial evidence of their authority as alleged bargaining agents, which caused the picketing to be unlawful, and that the picketing was carried on for an unlawful purpose.
>
> "We do not deem it necessary to determine the applicability in these cases of Sec. 447.09(3) Florida Statutes or its constitutionality.
>
> "The petitions for certiorari should be granted and the challenged orders quashed."

That this new requirement for lawful picketing would be applied even where the union proved that it represented a majority was demonstrated in the Versailles case. In that case, the trial court had found that the union represented a majority of the employees, that it had informed the employers of the object to be accomplished by the picketing and that it had afforded him a fair opportunity to negotiate. Despite these findings, the Supreme Court, on December 14,

1955, on the authority of *Boca Raton*, reversed the trial court's order denying a temporary injunction and directed that the injunction prayed for be issued (Vers. R. 144).

The same fate was necessarily to befall the decision of the chancellor in the San Marino case who, as a way out of the dilemma presented by the difficulty of proof of majority status, had ordered a secret ballot election to be conducted. In January 1956, the Florida Supreme Court, again on certiorari, set aside the order for an election but continued in effect the temporary injunction against picketing which the trial court had entered pending such election. The case, the court said, was substantially the same as the earlier cases in the sequence. There was no precedent, it said, for the appointment of a commissioner to conduct an election. The union's claim that it was desirable to have a secret ballot in order to protect its members against "blacklisting," had no vitality, the court said, because the union had in fact filed in the case some membership cards signed by their alleged members. The appropriate procedure to determine the question of the majority status of the union was, the Supreme Court said, the traditional equity procedure heretofore recognized in the courts, including the cross-examination of the individual members (Marino R. 148-52).

The Fifth Phase: Final Orders in the Trial Courts (November 1955-February 1956)

The judgments of the Florida Supreme Court in both the second and fourth phases were all issued on preliminary injunction and, hence, could not be reviewed in this Court. *Montgomery Bldg. Trades Council* v. *Ledbetter Co.,* 344 U.S. 178 (1952). The union had not, in any of these cases, actually tendered its membership cards to the employer before striking, since no such requirement had even been suggested at the time. Nor, since the employers now regarded the strikers as no longer being employees, and the National Labor Relations Board had refused to take jurisdiction over

the union's complaint that this constituted an unfair labor practice, could the union ask its members now to return to work and then satisfy the Florida Court's new requirements before again striking. The only course, therefore, was to return to the trial courts and obtain final orders as the basis for a new appeal to the Florida Supreme Court and, ultimately, to this Court.

This was done. Pursuant to stipulation final orders were entered in the Sax and Sans Souci cases on November 30, 1955 (Sax R. 407; Souci R. 352); in the Versailles case on January 9, 1956 (Vers. R. 153); and in the San Marino case on February 27, 1956 (Marino R. 158). The cases were consolidated, for purposes of briefs and argument, in the Florida Supreme Court with 18 other similar cases. Briefs were filed in May and July 1956 (Sax R. 425-556) and all 22 were ready for final disposition.

The Sixth Phase: The Fontainebleau (February 1957)

While these 22 cases were pending in the Supreme Court of Florida on appeals from final orders, the Florida Supreme Court, on February 1, 1957, issued a new opinion, on certiorari from denial of a temporary injunction, again changing the rules. The case was *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d 415.

In the Fontainebleau case, the plaintiff filed its complaint in December 1955, after the Supreme Court's successive Saxony and Boca Raton opinions. In accordance with the Saxony opinion, the trial court issued a temporary restraining order, prior to hearing, on the basis of the plaintiff's sworn petition. On January 30, 1956, after answer, a hearing was held. The chancellor found that the union had met the standards set forth in the Boca Raton opinion of the Florida Supreme Court and dissolved the temporary injunction. Again, as in the earlier cases, the plaintiffs sought certiorari in the Florida Supreme Court to quash the order dissolving the temporary injunction. The Florida Supreme Court complied.

It is difficult to state with any confidence precisely what the Court held in the *Fontainebleau* case. The Court for the first time, seemed to rely upon the provisions of Sections 447.01 and 447.09 of the Florida Statutes, 1955. These statutes, the court said, "require that all employer-employee relations be conducted decently and in order." The court then went on to consider the trial court's statement that under the Boca Raton opinion, the union must, prior to striking, show that it represented "at least some of the employees," but need not prove a majority. The language in Boca Raton, the Supreme Court said, was not a proper statement of the law, but a "mere expletive of the situation before the court." A majority vote *was* required both by the federal law and state law, the court said, before a strike could be called.[5] But, it went on, there was no such requirement as to picketing.

As to picketing, the court said, "law, order and decency require that it be done in an atmosphere conducive to reaching a result that it is fair to the employer, the employees and the public. If attempted in an atmosphere of violence, insinuation, bad faith, deception, farce, or damned-if-I-don't-show-you spirit, it would not be recognized as a means of adjusting labor disputes."

Turning to the factual record in the case before it, the court said that the correspondence conducted between the employer and the union, as well as the evidence taken at the trial "exhibit bad faith, a lack of respect one for the other, a tense feeling between them and a disposition to haggle over the issues if there were any." The court then recited seven charges by the plaintiffs, mostly consisting of charges that the union had violated the standards set forth in the Sax and Boca Raton opinions. It said, "Respondents deny or evade these charges but the evidence supports most of them"; it did not, however, specifically discuss the par-

[5] There is, of course, no such requirement under federal law and the states are forbidden to impose one in an industry affecting commerce. See *Auto Workers* v. *O'Brien,* 339 U. S. 454.

ticular factual findings of the chancellor which it found to be reversible.

After stating that it was not "conclusively shown that any bona fide labor dispute existed in petitioner's hotel," [5a] and various factual reasons therefor, including the existence of "violence or near violence" condemned by the statute, the court concluded by stating what seems to be an entirely new rule with respect to picketing conducted by a union, as opposed to picketing by individual employees.

Any number of employees, even if less than a majority, ("as distinguished from representatives of a labor union") could not be prohibited, the court said, from engaging in lawful picketing as individuals for the purpose of truthfully acquainting the public with their grievances *if they complied with the prerequisites to lawful picketing set forth in the Sax case.* However, the court said, this rule was applicable to employees only. As to the union as such, it could not, under the circumstances presented, engage in picketing by use of the members of the union as pickets who are not employees.

Presumably this concluding paragraph of the Florida Court means, if it means anything, that the requirements set forth in the prior opinions of the court were applicable to employee picketing, but that even if those requirements were met, union picketing should be prohibited under the circumstances of the Fontainebleau case.

[5a] The Court, throughout the opinion, seemed to reverse the normal burden. The chancellor, after hearing, had denied injunctive relief to the plaintiffs. The assumption of the Supreme Court seems to have been that his decision should be reversed unless the respondent union could show that *it* was entitled to relief. Lack of evidence, or "conclusive" evidence, in the record on any point—as to the truthfulness of the placards, as to the existence of a bona fide labor dispute, as to dissatisfaction with working conditions, as to the fact that the "gravamen of the picketing . . . originated within the confines of the . . . hotel," was assumed to be sufficient to require reversal and a direction that the trial court enjoin all picketing.

The Seventh Phase: Final Decisions by the Florida Supreme Court (March 15, 1957)

The instant cases were finally decided by the Florida Supreme Court on March 15, 1957. They were not decided, however, on the basis of the Supreme Court's prior Saxony or Boca Raton opinions. To the contrary, in each of 22 cases a *per curiam* order was entered affirming, on the authority of Fontainebleau, the injunctions entered below (Sax R. 419; Souci R. 362; Vers. R. 162; Marino R. 169).

The uncertainty in the language of the Supreme Court of Florida in Fontainebleau makes it less than clear how the opinion in that case applied to the instant cases. Certainly, none of the language as to violence or as to the failure of the union to represent the employees or to afford the employer an opportunity to engage in negotiations could be said to apply. In none was there any finding of violence. In some of the cases there was a finding, unreversed by the Supreme Court of Florida, that the union represented a majority of the employees and that it had afforded to the employer an opportunity to engage in negotiations before it called the strike and began picketing. To the extent that meaning can be derived from the fact that the Supreme Court of Florida, in all of the cases, relied on Fontainebleau, therefore, it must be assumed that the portion of the opinion referred to was the portion stating that picketing by a union, as distinguished from picketing by individuals, is subject to the requirement, unstated in the earlier opinions but set forth in Fontainebleau, that it "be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public" not in an atmosphere of "insinuation, bad faith, deception, farce, or damned-if-I-don't-show-you spirit."

How the Federal Questions Were Raised and Preserved

The Federal questions sought to be reviewed here by the union were appropriately raised and argued—although largely ignored by the Florida courts—in each of the cases.

The contention that the injunctive orders sought would violate the 14th Amendment and the right of free speech was raised in each case by the union in its first responsive pleadings (Sax R. 373, 376; Souci R. 23, 26; Marino R. 17; Vers. R. 36). Since the trial courts in each case refused to issue the temporary orders requested, they did not pass upon this contention.

The Florida Supreme Court, in its Saxony and Boca Raton opinions, recognized the existence of a free speech question but, in each case, dismissed the union's constitutional contention by stating that picketing for an "unlawful purpose" was not constitutionally protected.

On the final appeal, the union specified in great detail in its assignments of error, its contention based upon the 1st and 14th Amendments, both as to the injunction against picketing and the restraint against other publication. In accordance with Rule 23(1)(f) of the Rules of this Court, there is reprinted in Appendix B, hereto, the full text of the assignment of errors in the Sax case (Sax R. 410). The assignments of error in the other cases were practically identical (Souci R. 355; Marino R. 160; Vers. R. 155).

The Florida Supreme Court, in affirming the final orders on the basis of its Fontainebleau opinion, presumably adopted the discussion in that opinion of the free speech contention based on the *Swing* case. That discussion consisted of a statement that, under *Swing,* "there are circumstances in which the right to picket is an aspect of free speech and may not be infringed" but that the law placed limitations on that right.

The contention that the Florida courts lacked jurisdiction because of the exclusive Federal regulation of labor relations in industries affecting commerce was also raised by answer or supplementary answer in the trial courts (Sax R. 381; Souci R. 343; Marino R. 33; Vers. R. 56). In the Saxony and Sans Couci cases, the union's offer of proof in support of this contention was rejected without discussion

on grounds that it was immaterial and irrelevant (Sax R. 407; Souci R. 352). In the Versailles case, a motion was made to strike this defense on the ground that the facts alleged were immaterial and insufficient to state any defense (Vers. R. 59). The trial court ignored both the defense and the motion in granting final relief (Vers. R. 149). The question was preserved in each case by the union's assignment of errors (Sax R. 410; Souci R. 355; Vers. R. 155). The Florida Supreme Court, in affirming the final orders, rejected the contention by ignoring it.

In one case—San Marino—the trial court, after the initial hearing, found that the allegation of interstate commerce was not supported by evidence and explicitly overruled the union's jurisdictional contention (Marino R. 36). On final decree, however, the chancellor adopted the same course of action as that adopted in the other cases, striking the defense based on lack of jurisdiction and the affidavit in support thereof. (Marino R. 158). The union's assignment of errors specified that the trial court's action in refusing evidence of the exclusive jurisdiction of the National Labor Relations Board was in error (Marino R. 160).

One brief was filed by the union covering all 22 cases in the Florida Supreme Court. It is included in the record of the Sax case, as is the brief filed for the employer (Sax R. 426-556). These briefs show that issue was squarely joined on the merits of both Federal questions in the final hearing before the Florida Supreme Court.

REASONS FOR GRANTING THE WRIT

1. These cases, with the other cases simultaneously decided by the Supreme Court of Florida, present an important question of federal constitutional law, viz., whether the 14th Amendment prevents state courts from enjoining all picketing where:

(a) the picketing is peaceful;

(b) the effect of the picketing is to inform the consuming public at large of the existence of a labor dis-

pute rather than to "signal" action by other unions or employees;

(c) the "unlawful purpose" on the basis of which the picketing is enjoined is a variable subterfuge, plainly designed to prevent all picketing irrespective of its purpose;

(d) the prohibition is applicable only to union picketing, not to picketing by employees.

In *Teamsters Union* v. *Vogt,* 354 U. S.——(1956 Term No. 79), this Court reiterated its earlier holding in the *Thornhill* [6] and *Swing* [7] cases that "state courts, no more than state legislatures, can enact blanket prohibitions against picketing." It also concluded, however, that *Thornhill* and *Swing* did not necessarily bar state action where "a state had designed a remedy to meet a specific situation or to accomplish a particular social policy." There was, the court said, "a broad field in which a State, in enforcing some public policy . . . . . could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy."

This case, we believe, presents squarely the question as to whether there remains any constitutional limitation on the cases in which the states may prohibit peaceful picketing. If picketing can be forbidden for the reasons set forth by the Florida Court in these cases, then the "broad field" discussed in the *Vogt* case is, in fact, the universe; no state action against picketing will transgress the constitutional requirements of the 14th and 1st Amendments.

In the *Vogt* case itself, as well as in most of the other cases following *Thornhill* and *Swing* in which this Court has upheld a prohibition against peaceful picketing, there have been two elements:

(1) "picketing that involved more than publicity" that is, picketing which caused employees of suppliers, trucking companies, etc., to refuse to deliver or haul

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[6] *Thornhill* v. *Alabama,* 310 U. S. 88.

[7] *AFL* v. *Swing,* 312 U. S. 321.

goods, rather than picketing directed solely to the public at large for the purpose of persuading them to withhold patronage; *and*

(2) a particular and defined social policy which would be violated if such picketing were permitted.

As this Court stated in the *Vogt* decision, the picketing decisions of the Court constituted a "review of the balance struck by a state between picketing that involved more than 'publicity' and competing interests of state policy."

In the present cases, neither of the above two factors is present. The only effect of the picketing, and the only damage alleged in the complaints, was that "members of the public are being deterred and stopped from patronizing" (Sax R. 8) the struck hotels.[8] That the restraint sought, and granted by the Florida courts, was restraint against the informational effect of the picketing on the public at large, i.e., picketing as publicity, is emphasized by the fact that, in the Sax and Sans Souci cases, the injunctions against picketing were coupled with an injunction against "publishing or causing to be published any statements to the effect that a strike, walkout, or cessation of work is in effect at the Hotel, or that the plaintiff refuses to negotiate or recognize the defendants or affiliated organizations as a collective bargaining agent. . . ."

Nor, as the sequence of the decisions makes clear, did the picketing here transgress any defined social policy of the state. When the picketing began, the only relevant defined social policy of the state was the one enforced by Wisconsin in the *Vogt* case—it was unlawful to coerce an employer to coerce his employees to join a union. As the litigation progressed, and it was clear that no case of violation of this

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[8] Although the complaints almost uniformly charged that the hotels' loss of custom resulted from harassment and threatening of the hotel guests, as well as from the information presented by the picket signs, no evidence in support of these allegations was introduced and the decrees rest entirely on the persuasive effect of the pickets upon customers.

policy could be made out, the Florida Supreme Court set up new prerequisites for lawful picketing. Then, when the union showed that in fact it met even these new rules, the Florida Supreme Court set up still further new rules. Finally, as stated by that court in the Fontainebleau case, even if those rules were satisfied, picketing by the union—although not by the employees—could be forbidden because the union in its prior negotiation demonstrated "a lack of respect" for the employers and "a disposition to haggle over the issues if there were any." As we read the decisions of this Court, including the *Vogt* decision, this kind of prohibition of peaceful advertisement to the general public is still prohibited by the 14th Amendment.

2. Even if we assume that the rules explicitly laid down in Boca Raton and Sans Souci and applied in Versailles *are* the rules, and even if we were to assume that they had been in effect from the beginning, there still would remain a serious constitutional question.

The essence of the Boca Raton rule is that peaceful, persuasive picketing for the purpose of obtaining union recognition will be enjoined by Florida if the union has not, prior to calling a strike in support of its demand for recognition, submitted its membership list to the employer. As the Versailles and San Marino cases show, it will not do for the union to submit a certified statement by an auditor that he has examined the membership cards held by the union and that they constitute a majority of the employees in the union. As the San Marino case shows, the union cannot ask, even as a defense against an injunction, that the court conduct a secret ballot election. The necessary pre-condition for picketing is that the union, before it calls its members out on strike, submit the cards they have filed to the employer.

What this means, in practical effect, is that as a condition for publicizing its dispute with an employer, a union must first provide him with the means for destroying it. In a state such as Florida, which provides no mechanism for

holding secret ballot elections nor any administrative remedy for those discharged for union membership or activity, the conditions established by the Florida court effectively preclude any picketing by a union in support of a demand for recognition. The information which Florida has required that the union supply plainly is the information which any employer needs in order to enable him to discharge the adherents of the union at his convenience and to apply the now fortunately infrequently-used technique of the blacklist. It is the rare worker who, unprotected by the National Labor Relations Board will willingly sign up with an unrecognized union if he knows that the union will deliver his name to the employer.

None of the cases in which this Court has permitted states to effectuate their social policies by restricting the use of the picket line as a method of communication goes so far as to indicate that a state can require this kind of a condition for peaceful picketing. Neither *Ritter's Cafe*,[9] *Giboney*,[10] *Hughes*,[11] *Gazzam*,[12] *Hanke*,[13] *Graham*,[14] nor *Vogt* even suggest that a state may impose conditions on peaceful picketing which will effectively frustrate the very organization of labor unions.

To condition the right to picket on the prior submission by a union of a blacklist is itself, we submit, a violation of due process of law.

3. As already noted, the Florida Court here approved injunctions which prohibited not only the communication of information to the public by way of picket signs but also any publication, through handbills, advertisements, or otherwise, of the existence of a strike at the plaintiffs' hotels, or of the refusal of the plaintiffs to negotiate. This is not

[9] *Carpenters Union* v. *Ritter's Cafe*, 315 U. S. 722.
[10] *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490.
[11] *Hughes* v. *Superior Court*, 339 U. S. 460.
[12] *Building Service Union* v. *Gazzam*, 339 U. S. 532.
[13] *Teamsters Union* v. *Hanke*, 339 U. S. 470.
[14] *Plumbers Union* v. *Graham*, 345 U. S. 192.

the kind of "argumentative excess" which "astuteness may discover" in reading the terms of the injunction against picketing to which this court referred in the *Vogt* case. On the contrary, it is a separate and distinct restraint, wholly unrelated to the restraint against picketing.

Nor can this restraint on the dissemination of information be justified by any claim that the prohibited publication would be false or libelous. The plaintiffs did allege—although the chancellors found otherwise in unreversed findings—that the hotels had not refused to negotiate with the union. But the plaintiffs admitted and, indeed, asserted that the union had called a strike at their hotels. And they procured an injunction from the Florida courts forbidding the union to publish any statement of this fact.

We can think of no justification under the decisions of this Court which would sustain the constitutionality of this plain restraint on freedom of communication.

4. The decision of the Florida courts in all of these cases is plainly contrary to the decision of this court in *Guss* v. *Utah Labor Relations Board,* 353 U.S. 1 (1957). There can be no serious dispute that these hotels are engaged in a business which affects interstate commerce. In all of the cases there are undisputed affidavits to that effect which the trial courts held to be irrelevant. Furthermore, this Court can take judicial notice of the fact that there is now pending in the Court of Appeals for the District of Columbia a suit in which it is conceded by the National Labor Relations Board that the business of these hotels comes within the statutory definition of commerce contained in the National Labor Relations Act.[15]

It is true, of course, that the National Labor Relations Board has refused to take jurisdiction over the present cases. But this refusal, as in the *Guss* case, was based upon a

[15] In *Hotel Employees* v. *Leedom,* No. 13,765, now pending in the Court of Appeals for the District of Columbia, the union filed a complaint alleging that the Board had refused to take jurisdiction over

claimed discretionary right to refuse jurisdiction, not upon any contention that the labor relations practices of these hotels are not governed in substance by the National Labor Relations Act.

In the *Guss* case, this Court held that the refusal of the National Labor Relations Board to exercise jurisdiction does not confer jurisdiction upon the states to regulate labor relations matters which they would be forbidden to regulate, under the terms of the National Act, if the Board would exercise jurisdiction. This case comes squarely within the terms of the *Guss* decision. Indeed, it provides a much clearer case of conflict with federal law than was presented in *Guss*.

In the *Guss* case, as well as in the two companion cases, the party proceeded against under state law claimed that the state had no jurisdiction because the conduct sought to be enjoined was also a violation of federal law. This Court sustained that contention. In this case, the party proceeded against in the state courts—the union—contends, without fear of substantial contradiction, that the activities which Florida has restrained are activities which are protected against interference by the terms of Section 7 of the National Labor Relations Act. This case, in short, is not *Garner* [16] but *O'Brien*.[17]

This distinction is particularly emphasized by the fact that throughout the Miami controversy the union has used every possible effort to procure the intervention of the Na-

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a representation petition, and over unfair labor practice charges against each of the hotels here involved. The union asked, inter alia, that the Board's orders be set aside and that it be enjoined from refusing to take jurisdiction. The Board did not contest the union's commerce allegations but defended solely on the ground that the District Court had no jurisdiction and that the complaint failed to state a claim on which relief could be granted. The District Court granted summary judgment to the Board, upholding the Board's discretionary refusal to increase its statutory jurisdiction, 147 F. Supp. 306.

[16] *Garner* v. *Teamsters Union*, 346 U. S. 485.

[17] *Auto Workers* v. *O'Brien*, 339 U. S. 454.

tional Labor Relations Board. It filed petitions with the Board to conduct secret ballot elections. It filed charges of unfair labor practices against the employers. And it is now engaged in an effort, through litigation, to compel the Board to exercise its plain statutory mandate to apply the National Labor Relations Act to these disputes.

This union does not seek refuge in a "no man's land." It has no desire to avoid regulation by either state or federal bodies. It seeks only to protect rights guaranteed to it by Federal statute and, indeed, until this litigation, by Florida law.

5. There is one final, and, we believe, overriding reason why the writ should be granted in these cases, and the judgments below reversed.

The story of this litigation, as plainly revealed in the records of the cases, is a travesty on due process of law. There are, we submit, clear enough substantive conflicts with the governing federal law to warrant granting the writ here. But, perhaps even more importantly, the Florida Court by its course of decision in these cases has revealed as plainly as it can be revealed without specifically so stating that the substantive law does not matter—this union is to be enjoined irrespective of the law. In so doing, we earnestly and respectfully suggest, the Florida Court has violated the constitutional requirements of due process of law.

CONCLUSION

For the reasons above set forth, it is respectfully submitted that this petition for certiorari should be granted.

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APPENDIX A—OPINIONS BELOW

First Phase—Trial Court Orders

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY. No. 178554

SAX ENTERPRISES, INC.,

Plaintiff

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants

ORDER DENYING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF

THIS CAUSE came on regularly for hearing upon the plaintiff's application for temporary injunctive relief in accordance with the prayers of the verified complaint as amended. The court has heard and considered the testimony adduced on behalf of the plaintiff, has read and considered the evidenciary exhibits of the plaintiff, and has heard and considered arguments of counsel for the respective parties. In consideration thereof, the court is of the opinion and finds that the plaintiff has not made a sufficient showing for injunctive relief on the basis of the manner of the picketing and the method in which it is being conducted.

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED that the plaintiff's application for a temporary injunction be and it is hereby denied, without prejudice; and

IT IS FURTHER ORDERED that, the defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed

upon, but determination of this question is reserved until final hearing.

DONE AND ORDERED in Chambers this 5 day of May, 1955.

CHARLES A. CARROLL
Circuit Judge

(An identical order was entered in the Sans Souci case (*Leevlans Corp.* v. *Hotel Employees Union, et al.*) by Circuit Judge Floyd on May 11, 1955.)

Second Phase—The Sax Opinion

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955, SPECIAL DIVISION A

CASE No. 26,187

SAX ENTERPRISES, INC.,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

Opinion filed May 27, 1955.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR DADE COUNTY, CHARLES A. CARROLL, JUDGE.

HOBSON, J.:

Petitioner is the owner of one of the popular hotels of Miami Beach, the Saxony. Respondents comprise Hotel Employees Union Local No. 255 (A. F. of L.), its business agents and officers. Petitioner filed a complaint wherein it prayed that respondents be enjoined from picketing its hotel on account of violence and that the picketing was done for an unlawful purpose. On application for temporary injunction, evidence was taken, at the conclusion of which temporary injunction was denied. As to the contentions that the picketing was for an unlawful purpose, the chancellor specifically recognized that to be the main issue in the case but refused to adjudicate it because no answer had been filed or issue made on that point. Said the chancellor, that point should be decided at final hearing after answer. His order was conditioned on expediting the cause on account of its effect on the parties. From this order, we are confronted with an appeal by certiorari.

The point for determination is whether or not the chancellor committed error in entering said order.

At the outset it is pertinent to relate that while this case was

heard in conjunction with similar cases against the Roney Plaza, the Monte Carlo, the Sans Souci, the Sherry Frontenac, the Sorrento, and the Algiers Hotels, the order involved here applies only to the Saxony Hotel. We have examined the record carefully and we find insufficient showing to reverse the chancellor on the question of whether or not picketing the Saxony Hotel was accompanied by violence. His order was "without prejudice to reapply for an injunction on the grounds of excessive conduct or violence, if such appears to be justified by future acts" and warranted by the evidence.

Whether or not the picketing was being done for a lawful purpose presents a more difficult question. Petitioner contends that it was entitled to an injunction because its complaint was sworn to and not challenged by motion to dismiss, answer or affidavit denying the facts relied on. Anderson v. Tower Amusement Co., 118 Fla. 437, 159 Fla. 782; Kellerman v. Chase & Co., 101 Fla. 785, 135 So. 127; First National Bank of Gainesville v. Massey, 132 Fla. 113, 182 So. 187; Taylor v. Florida East Coast Railway Company, 64 Fla. 635, 45 So. 574; Seaboard Oil Company v. Donovan, 99 Fla. 1296 128 So. 821; Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union (Fla. 1954), 72 So. 2d 670, and Osceola Groves, Inc. v. Wiley (Fla. 1955), 78 So. 2d 700, are offered to support this contention.

We must agree with petitioner's contention because in a situation such as is presented by the record in this case, when the point is raised, the chancellor is duty bound to determine on an application for a *temporary* restraining order whether the picketing was for a lawful purpose. The allegations of the sworn complaint together with the evidence introduced at the hearings upon the application for a temporary restraining order, at which hearing all parties hereto were represented, are sufficient under our opinion in Miami Typographical Union v. Ormerod (Fla. 1952) 61 So. 2d 753, the cases cited therein, and Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union, supra, 72 So. 2d 670, to establish the fact that the picketing which is being carried on was and is for an unlawful purpose.

Without doubt a labor organization has the right to engage in

peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative (Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union, supra) and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc. v. Dickson, et al. (Texas) 219 S. W. 2d 795.

With no evidence to the contrary, the chancellor had no alternative other than to accept as true the sworn allegations of the complaint. Pertinent among these allegations are the following:

> "* * * the two organizers, one of whom is David Herman, and the other is one of the defendants, Albert H. Berlin, have utilized all the pressure tactics known to labor organizers to force and intimidate the employees of the plaintiff to become members of said labor organization. Their efforts in enlisting membership have been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through economic sanctions, to sign contracts with the said alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.
>
> "To this end, said David Herman contacted Sol Cohen, president of the Miami Beach Hotel Owners Association, and demanded that the said Cohen negotiate with and line up all of the owners of the first class ocean front hotels on Miami Beach, to execute labor contracts with the said alleged union, thus recognizing said union as representing the employees of the said hotels, and in this fashion, to enable the said union to procure membership among the employees of said hotels. Said Herman threatened Mr. Cohen by stating that unless the Hotel Association actively enlisted the hotel owners to join with the said union by giving it contracts as

aforesaid, that the said David Herman would, through economic sanction such as picket lines around said hotels, cause them great economic loss, and thus force them, through such economic loss and pressure, to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of or represented by the said alleged union in any fashion whatsoever. The Miami Beach Hotel Owners Association, and its president, has no power or authority to represent the owners of the individual hotels in reference to any labor matters involving the owners of any particular hotel."

V

"The Plaintiff has had no dealings whatever with any members of the HOTEL EMPLOYEES UNION, LOCAL NO. 255, A. F. of L. Said union has never sought to negotiate with the plaintiff as the representative of plaintiff's employees; in fact, Local No. 255 does not represent the vast majority of the plaintiff's employees. No labor controversy or negotiations in reference to any labor dispute has ever been instituted, inaugurated, or carried on between the plaintiff and the said alleged union, and the said union has never sought to bargain with the plaintiff as the alleged representative of plaintiff's employees, and plaintiff alleges that the said union has never been authorized by the vast majority of its employees to represent them."

VI

"The plaintiff has never refused to recognize the defendant union, and has never refused to negotiate with said union; the plaintiff has never been requested by the said union to negotiate with it, and has never been advised by the said union that the union is the bargaining agent for plaintiff's employees. In truth and in fact, no demand or grievance of any nature whatsoever of the plaintiff's employees has, up to the present time, been made of or placed before the plaintiff, its officers or agents.

"Notwithstanding, said union at 6 o'clock in the morning on Wednesday, April 13, 1955, placed a picket line consist-

ing of six or more pickets in front of the plaintiff's place of business, and each of said pickets in said line carried a placard or poster which falsely and fraudulently alleged that the plaintiff had refused to negotiate with the defendant union. Each of said placards carried the following words:

> 'This hotel refused to negotiate with Hotel Employees Union, Local # 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach.'

"Such representation made by said union is false and untrue and the said union knows that the said statements are false and untrue. Said statements are made for the purpose of deceiving the public. The picket line was placed around the plaintiff's place of business for an unlawful and illegal purpose in that the defendant union is carrying out its threat to the president of the Miami Beach Hotel Owners Association by placing economic pressure on the plaintiff, thereby seeking to cause the plaintiff, by loss of revenue thus occasioned, to execute a labor contract with the said union." (Tr. 3, 4, 5, and top line on p. 6)

Since, according to the allegations of the sworn complaint, the placards carried by the pickets contained false information, it cannot be said that they conveyed "information concerning the *facts* of a labor dispute." (Italics supplied.) It is therefore obvious that the purpose of the picketing is unlawful. As we said in the case of Miami Typographical Union No. 430 v. Ormerod, supra:

> "When picketing is carried on to further an unlawful purpose, as was correctly determined in this case, it loses its characteristic of free speech which is guaranteed by the first Amendment to the Federal Constitution. It becomes, as was stated by Professor Gregory in his work on Labor and the Law, cited with approval by the U. S. Supreme Court in the case of Hughes v. Superior Court of State of Calif., 1950, 339 U. S. 460, 464, 465, 70 S. Ct. 718, 94 L. Ed. 985, 'simply a species of coercion traveling under the guise of speech for the purpose of enjoying constitutional immunity * * *'."

It is clear, therefore, that the real purpose of the picketing was

to force the employees of the Saxony Hotel to designate the union or the individual respondents as their bargaining agent, and to coerce said hotel owners through economic sanctions to sign contracts with the union and to use said contracts as a basis to compel the employees of the hotels to become members of the respondent union.

Certiorari is granted as to that part of the chancellor's order which deferred a ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and the cause is remanded to the Circuit Court with directions to enter a temporary restraining order.

It is so ordered.

DREW, C. J., TERRELL AND SEBRING, J. J., CONCUR.

Second Phase—Sans Souci

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955, SPECIAL DIVISION A

CASE No. 26,197

BOCA RATON CLUB, INC., A FLORIDA CORPORATION, AND HILDEMART CORPORATION, A FLORIDA CORPORATION,

Petitioners,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

* * * * *

CASE No. 26,200

LEEVLANS CORPORATION,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents,

* * * * *

(Captions of other cases omitted)

Opinion filed June 1, 1955.

AN APPEAL FROM THE CIRCUIT COURT FOR DADE COUNTY, ROBERT L. FLOYD, AND GLADYS L. CRAWFORD, JUDGES.

PER CURIAM:

The foregoing cases are similar to Sax Enterprises, Inc. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business

Agents and Officers thereof, decided May 27, 1955. These cases were combined and heard together in the lower court. Application for temporary injunction was denied after evidence in each case. The reason for denial was that the "plaintiff has not made a sufficient showing for relief on the basis of the manner of the picketing and the method in which it is being conducted." The court further found that "defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reversed until final hearing."

On authority of Sax Enterprises, Inc., vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955, certiorari is granted as to that part of the Chancellor's order in each of said causes which deferred ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and each of said causes ir remanded to the Circuit Court with directions to enter a temporary restraining order therein.

It is so ordered.

DREW, C.J., TERRELL, SEBRING AND HOBSON, J.J., CONCUR.

Third Phase—Trial Court Orders—Sans Souci

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY. No. 178667

LEEVLANS CORP.,

Plaintiff

vs.:

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRI MICHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants

ORDER VACATING AND DISSOLVING TEMPORARY INJUNCTION

This matter was before this Court previously on petition for temporary injunction. Upon this petition being denied a petition for certiorari was filed and granted by the Supreme Court of Florida in which the Circuit Court was directed to enter a temporary restraining order, which was done. See opinion filed May 27, 1955.

Thereafter, the defendants' answer was filed along with other pleadings filed by both plaintiff and defendants. A motion to vacate or dissolve the injunction was filed and the testimony of witnesses was heard at two all-day hearings on the motion to vacate.

This Court having examined the files, read the testimony given at the former hearing on petition for temporary injunction and having heard the testimony given at the hearing on the motion to dissolve the temporary injunction finds:

On the 18th day of April, 1955, a large number of persons were employed at the hotel operated by the plaintiff called the Sans Souci Hotel in the City of Miami Beach, Florida. Some of these employees, comprising less than a majority, were members of the defendant union or had designated the defendant union as their

bargaining agent or representative to negotiate with their employer in all matters pertaining to wages, hours and working conditions. A representative of the local union, Mr. Dave Herman, had called on the executive president of the Miami Beach Hotel Association, an association to which the plaintiff belonged, and was asked to negotiate or discuss the employees' working conditions. Mr. Herman was referred to Mr. Saul Cohen, the incoming president of the association. A discussion was held with Mr. Cohen by Mr. Herman about negotiations but to no avail. Letters, in evidence, were sent to the association and published in the local newspaper about the desire to negotiate. Mr. Lansburgh of the Sans Souci Hotel was a member of the Board of Directors of the association and was sent such a letter.

There is no doubt in the Court's mind that the plaintiff knew of the effort on Mr. Herman's part to discuss negotiations for such of plaintiff's employees as he represented.

There is no further doubt that the plaintiff was by his evasive tactics refusing to negotiate and did, in fact, refuse to negotiate.

On the 17th day of Aprii, Mr. Herman called Mr. Lansburgh at about 3:00 o'clock P.M. and asked him if he would negotiate and was informed that Mr. Lansburgh would have to talk with his partner. When told his answer would have to be given by 4:00 o'clock P.M. or picket lines would be established, Mr. Lansburgh could not or would not give an answer. Picket lines were started in Front of the Sans Souci Hotel at 6:00 o'clock A.M. on the 18th day of April, 1955, by representatives of the union.

A number of employees including union members refused to cross the picket lines established by the union. Later, some employees, not then members of the defendant union, joined the union or designated the union as their bargaining agent.

As has already been held by the lower Court and affirmed by the Supreme Court the picketing was peaceful. The placards displayed by the pickets had these words on them:

> "This hotel refused to negotiate with Hotel Employees Union, Local # 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach."

Subsequent to the walkout and on May 25, 1955, a strike vote

was held at three places designated by the union and a majority of those participating in the election voted to strike. The union contends and there is no testimony presented in contradiction thereof that those voting constituted a majority of the employees, as of the 17th day of April, 1955, of the plaintiff within the jurisdiction of the union.

These facts, with one exception follow closely those facts outlined in Johnson v. White Swan Laundry, cited in 41 So. (2d) 874 and also in Moore v. City Cleaners and Dyers, 41 So. (2d) 865.

The one exception is the strike vote in the Johnson and Whitehead cases had been held before the strike and which the Supreme Court in the Moore case, supra, said it was not necessary if it were to signal or announce a strike. The Court finds that it is immaterial.

If it should be decided otherwise, then the question would arise as to whether or not Section 447.09 F.S.A. paragraph (3), which says:

> "To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition."

is constitutional and valid. Its validity has been challenged by the defendant and if justice is to be done the validity of the act should be determined.

This particular paragraph of a similar act in Texas and Kansas has been held unconstitutional.

In International Union of Operating Engineers, Local No. 546, et al. v. Cox, reported in 219 SW (2d), page 787, the Supreme Court of Texas said:

> "Under the plain mandate of the above Federal decisions, we must necessarily hold that the Legislature of this State cannot deprive our citizens of the right of peaceful picketing by narrowly defining a 'labor dispute' as a controversy between an employer and not less than a majority of his employees. American Federation of Labor v. Bain, 165 Or. 183, 106 P. 2d 544, 130 A.L.R. 1278. To so restrict the

term would deny to the minority valuable rights guaranteed by the Constitution, and by reason of the definitions given by the Statute to 'secondary strikes' 'secondary picketing' and 'secondary boycott', those minorities would be subjected to the penalties and liabilities provided in the statute if they sought to publicize their grievances. However, it should not be understood that the states are without authority to enact reasonable regulations for picketing so long as these regulations do not deprive the citizen of his fundamental rights. It cannot be doubted that under the police power the states may impose certain reasonable restrictions even upon peaceful picketing provided they are not destructive of the right to publicize a labor difficulty. They may reasonably regulate the number of pickets, the conduct and demeanor of such persons, the terminology of the placards used in informing the public of the facts of the controversy, and reasonably define the dispute which may justify the activity. That is clearly indicated in the Thornhill case wherein the Supreme Court was careful to point out that the statute there condemned 'leaves room for no exceptions based upon either the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute.' (310 U.S. 88, 60 S.Ct. 743).

"The fundamental constitutional right which the Supreme Court of the United States upheld in the above decisions was declared to be secured to 'every person.' Thus there is no escape from the conclusion that the denial of such right to the members of the minority is no less an unconstitutional abridgment of the right simply because it is saved to the majority. On what theory may the distinction be justified? Does one lose his constitutional guarantee merely because he aligns himself with the minority group? Are rights less sacred to a small group than they are to the multitude? Was not one of the dominant purposes of the Constitution to protect minorities from the unlawful and avaricious encroachments of majorities? Surely the framers of our Constitution had

no thought that rights guaranteed to the many should be denied to the few.

"As reluctant as we are to declare acts of our legislature unconstitutional, it becomes our duty to declare invalid that portion of the statute involved which seeks to restrict a 'labor dispute' to a controversy between an employer and a majority of his employees."

In Stapleton v. Mitchell reported in 60 Fed. Supple. at page 51, a group of union officials brought an action which had as its object the determination of the validity and constitutionality of a Kansas law similar to our Florida law above quoted.

The case was heard by a three judge Court as provided under the Federal law and the Court held the act unconstitutional. The decision was appealed to the Supreme Court but dismissed on stipulation.

In the opinion rendered in that case the Court said:

"The right to peaceably strike or to participate in one, to work or refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the state may not condition or abridge in the absence of grave and immediate danger to the community. But by Section 9(3)(12)(13), the State of Kansas has not only conditioned these rights, but expressly prohibited them and made their exercise a criminal offense. In this setting we think it is the inherent prohibitions of the statute standing alone which impose the unconstitutional restraint, and those against whom the statute is plainly directed should not be required to abide the processes of criminal justice in order to obtain the redress to which they are entitled under the Federal Constitution."

This Court is, therefore, of the opinion that paragraph (3) of Section 447.09 F.S.A. is unconstitutional and invalid.

The Supreme Court of Florida in its opinion filed May 27, 1955, said:

"In order for such picketing to be lawful, the Union must establish that the employees have chosen the (Union) as their representative."

Third Phase—Trial Court Orders—Sans Souci

The Court finds this has been done and that the union was chosen as the bargaining representative by certain employees prior to the date of picketing.

The Superme Court further said:

> "The labor Organization must also inform the employer of the object to be accomplished by the picketing . . ."

The Supreme Court of Florida in Hotel & Restaurant Employees and Bartenders Union v. Cothron cited in 59 So. (2d), page 366, the following:

> "It appears that the Chancellor either misconstrued or misapplied the law to the facts as he found them in entering the injunction. The Chancellor stated that 'Complainants should have been advised of the reasons for the impending picketing and given an opportunity to remedy the cause as they saw fit.' This was no reason to grant an injunction in this case. There is no rule, regulation, or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law. The advisability or necessity for such is for legislative determination and not for the courts."

However, as cited above, there is no doubt in the Court's mind that the plaintiff knew that the union desired to negotiate and that the negotiations were to be about wages, hours and working conditions of its employees who were represented by the union.

The Supreme Court of Florida in its opinion of May 27, 1955, further said:

> "and afford to the employer a fair opportunity to engage in negotiations."

This Court finds that if the Supreme Court recedes from its ruling in the Cothron case, supra, that the plaintiff knew of the union's desire to negotiate long before the pickets were established but by the plaintiff's evasive and stalling tactics did not intend to negotiate and refused to do so.

It is, therefore, ORDERED, ADJUDGED AND DECREED

that the motion to vacate and dissolve the injunction is granted and the injunctive order heretofore entered in said cause is dissolved, vacated and set aside.

It is further ORDERED, ADJUDGED AND DECREED that the objections are overruled on all matters upon which ruling was reserved during the hearings.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 17th day of June, 1955.

J. FRITZ GORDON
Circuit Judge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180677

THOMAS JEFFERSON, INC., A FLORIDA CORPORATION,

Plaintiff

vs.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL), DAVID HERMAN, AS DIRECTOR OF ORGANIZATION OF SAID LOCAL, CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MISCHEL, INDIVIDUALLY AND AS BUSINESS OFFICERS AND AGENTS OF SAID LOCAL,

Defendants

ORDER OF THE COURT

THIS CAUSE came on to be heard July 7, 1955 upon the issues framed by the Bill of Complaint, the Answer and Supplemental Answer, and the Court heard all testimony offered by the respective parties and extensive argument pro et con, and the Court being otherwise fully advised in the premises, makes and enters the following findings and orders:

1. The allegations of the Supplemental Answer alleging interstate commerce and averring that this Court does not have jurisdiction were not supported by evidence. This Court has jurisdiction of the parties and the subject matter.

2. This court further finds from the sworn pleadings and the testimony of the witnesses for the respective parties that both parties have expressed a willingness to negotiate concerning the matters usually and normally attendant upon labor-management relations, and that the sole difficulty appears to lie in the fact that the plaintiff is not convinced that the defendant Union does in fact represent its employees. The defendant has produced its records showing it has been designated as bargaining agent for 47 employees at the San Marino Hotel, while the plaintiff, on the other

hand, has submitted a list of names which it represents as being the employees of the hotel, and alleges that only 3 of its recognized employees have designated the defendant Union as their bargaining agent. Although this cause came on for final hearing by consent of the parties, there was not enough evidence produced by either side to determine this easily ascertainable fact.

This Court has the authority to appoint a Commissioner to determine this fact by examining the plaintiff's payroll records and inquiring by proper means into the status of said employees as to union membership, and the free choice of such Union members as to their representation by defendant union. It is therefore

ORDERED, ADJUDGED and DECREED as follows:

1. Picketing at the San Marino Hotel shall be and the same is hereby enjoined until further Order of this Court.

2. The plaintiff shall forthwith make full and complete showing to the Commissioner hereinafter named in this Order, of all payroll records revealing a true and correct list of all of its employees, as of June 15, 1955, the date said picketing commenced; who come within the jurisdiction of Hotel Employees Union Local No. 255; in accordance with the Stipulation entered into in open court on July 7, 1955, by counsel for the respective parties.

3. The Commissioner hereinafter named shall, for the sole purpose of ascertaining the foregoing facts for the benefit of this Court, within 30 days from the date of this Order, cause an election by secret ballot to be held of the employees of plaintiff as of June 15, 1955, who come within the jurisdiction of the defendant Union, to determine the free choice of said employees as to their representation by defendant Union in the matter of labor-management relations; said secret ballot to be conducted at such place and time and in such manner and form as to the said Commissioner may seem appropriate and reasonable, the expense thereof to be taxed as part of the costs in this case.

4. The parties hereto are each respectively enjoined from in anywise coercing or intimidating the aforesaid employees of the plaintiff, by threats of any kind or by any act or means deterring or interfering with the free choice of the said employees to vote either for or against the designation of the defendant Union as the bargaining agent for the employees of said hotel.

Third Phase—Trial Court Orders—San Marino

5. The Court finds there is no strike at the San Marino Hotel, and the parties are hereby restrained and enjoined from falsely publicizing the alleged existence of a strike at plaintiff's hotel in publications that are published either in this jurisdiction or elsewhere.

6. The Honorable Joe Eaton, a former Judge of this Court, is hereby appointed as Commissioner of this Court for the purpose of ascertaining the names of those employees of the Plaintiff as of June 15, 1955, who are within the classification of employees over which the defendant Union assumes to assert jurisdiction; and to conduct the election by secret ballot as aforesaid, and thereafter report back to this Court with all convenient speed.

DONE and ORDERED in Chambers at Miami, Florida, this 11 day of July, A.D. 1955.

WILLIAM A. HERIN
Circuit Judge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY. No. 180588-I

R. S. LEVY: DANIEL LIFTER: AND J. J. LANSBURGH, AS TRUSTEE FOR THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST AND THE LEONARD LANSBURGH TRUST,

Plaintiffs

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, OF THE AMERICAN FEDERATION OF LABOR, AND DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MICHEL, INDIVIDUALLY AND AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants

ORDER DENYING TEMPORARY INJUNCTION

This cause came on to be heard September 16, 1955, upon Plaintiff's application for Temporary Restraining Order prohibiting the picketing of Plaintiff's hotel, the Versailles. This picketing has been in progress since June 11, 1955. Affidavits were submitted by the respective parties and the cause argued at length. The Court being thereby and otherwise fully informed in the premise finds that the picketing has at all times been peacefully conducted and for the lawful purpose of inducing the employer to recognize and negotiate with the Defendant's Union as the representative of such employees as are members of Defendant union. I find further that the union established that a majority of the employees had chosen it as their representative and that the labor organization had also informed the employer of the object to be accomplished by the picketing and that a fair opportunity was afforded to the employer to engage in negotiations; wherefore it is

Third Phase—Trial Court Orders—Versailles

ORDERED, ADJUDGED AND DECREED that the application for Temporary Restraining Order be and the same is hereby denied.

Done and Ordered in Chambers, Miami, Florida, this 22 day of September, 1955.

ROBERT L. FLOYD

Fourth Phase—The Boca Raton Opinion

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955, EN BANC.

CASE No. 26,197

BOCA RATON CLUB, INC., A FLORIDA CORPORATION, AND HILDEMART CORPORATION, A FLORIDA CORPORATION,

Petitioners

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

* * * * * * *

CASE No. 26,200

LEEVLANS CORPORATION,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

* * * *

(Captions of other cases omitted)

Opinion filed October 19, 1955.

WRITS OF CERTIORARI TO THE CIRCUIT COURT OF DADE COUNTY, ROBERT L. FLOYD AND GRADY L. CRAWFORD, JUDGES.

HOBSON, J.:

In *Sax Enterprises* v. *Hotel Employees Union Local No. 255*, 80 So. 2d 602, we decided a prior aspect of the matter which the cases now under consideration bring before this court. In the *Sax*

case we held on the basis of the showing made that it was error to deny a temporary restraining order against the picketing of the Saxony Hotel. The injunctive relief which was granted as a result of our mandates in the *Sax* case and in the instant cases related to picketing and the publicity measures used by the defendant-respondent union in connection therewith. Subsequently defensive pleadings were filed and further testimony taken upon motions of the respondents to dissolve and vacate the temporary injunctions issued pursuant to the mandates of this court. The chancellors below have issued orders of identical effect in all of these cases, granting the motions and dissolving and vacating the temporary injunctions.

Although the parties have attempted to present a multitude of issues in these cases, we are of the view that the only issues really involved are whether (1) the respondent union complied with the prerequisites to lawful picketing outlined in our opinion in the *Sax* case, supra, and (2) whether the picketing was for a lawful or unlawful purpose.

The chancellors found in substance that before the picketing commenced, the union did in fact represent some of the employees although less than a majority; that the union informed the petitioners of its desire to engage in negotiations, and that the petitioners used evasive tactics amounting to a refusal to negotiate or bargain. No one of the chancellors, however, made a finding that the union had, prior to the picketing, established by evidence of substantial character that any of the employees had chosen it as their representative.

Respondents contend that: the findings which were made are supported by competent substantial evidence; such findings in effect established the truth of the message contained in the cards which were displayed by the pickets, and which we reproduced in the *Sax* case, supra; the matter thus resolves itself into a situation where peaceful picketing has been carried on with the objective of accurately publishing the facts of a labor dispute, which is a lawful purpose within the doctrine of *Whitehead* v. *Miami Laundry Co.*, Fla., 36 So. 2d 382, and *Johnson* v. *White Swan Laundry, Inc.*, 41 So. 2d 874.

Petitioners take the position that the respondent union failed to

prove compliance with the prerequisite to lawful picketing set forth in the *Sax* opinion, of establishing "that the employees have chosen it as their representative."

In our opinion in the *Sax* case we said:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative, Treasure, Inc., v. Hotel & Restaurant Employees and Bartenders' Union, supra, and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc. v. Dickson, 148 Tex. 35, 219 S.W. 2d. 795."

Respondents say that the above pronouncements were nothing more than obiter dicta and that in any event they run counter to the established law of this jurisdiction. They cite our opinion in *Hotel & Restaurant Employees' & Bartenders' Union Local No. 156, A. F. of L.* v. *Cothron, et al,* 59 So. 2d 366, from which we quote:

> "It appears that the Chancellor either misconstrued or misapplied the law to the facts as he found them in entering the injunction. The Chancellor stated that 'Complainants should have been advised of the reasons for the impending picketing and given an opportunity to remedy the cause as they saw fit.' This was no reason to grant an injunction in this case. There is no rule, regulation, or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law. The advisability or necessity for such is for legislative determination and not for the courts."

We face this contention of respondents forthrightly. Our opinion in the *Cothron* case does indeed appear to be contrary to our state-

ment in the *Sax* case, supra, to the effect that as a prerequisite to lawful picketing "the labor organization must also inform the employer of the object to be accomplished by the picketing". It might be said that the underlying reason for our ruling in the *Cothron* case is a sound basis for recanting our pronouncement as to the other two prerequisites to lawful picketing outlined in the *Sax* opinion. We have given careful consideration to the apparent conflict between these two cases and have concluded that although there may exist "no rule, regulation or law of this State which requires" the foregoing prerequisites to lawful picketing, certainly honesty of purpose, fair dealing and a sound public policy demand them. Moreover, Sec. 447.03, F.S., grants unto *employees* the right to "*self*-organization" (Italics supplied) and "to bargain *collectively* through representatives of *their own choosing*" (Italics supplied). It seems clear that before being required to enter into negotiations with an alleged bargaining agent an employer should be shown by evidence of substantial character that his employees, or at least some of them, have voluntarily exercised the rights accorded them by our statute. Hence we deem it appropriate for the courts to fix reasonable and fair prerequisites to the end that, rather than economic strife, there may exist peaceful accord of labor disputes so necessary in the interest of the common weal.

The placards displayed by the pickets carried the following words: "This hotel refused to negotiate with Hotel Employees Union, Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". This language unquestionably connotes to the "common mind" a compliance with all prerequisites to lawful picketing, i.e., a pre-existing honest and forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute between employee and employer and a fair opportunity to engage in negotiations. It is clear that such an opportunity cannot be said to exist until and unless the employer is first assured by evidence of substantial character that if he negotiates he will do so with an authorized bargaining agent. The words on the placards "refused to negotiate" necessarily presuppose an opportunity to negotiate. Surely no one can doubt that such opportunity should be a "fair" opportunity. The placards did not speak the truth

in all its stark significance or give to the public actual facts concerning a labor dispute. Indeed, so far as this record shows petitioners, except for the uncorroborated representations of a putative bargaining agent, never, prior to the most recent hearing in the circuit court, knew as a matter of fact that their employees were actually dissatisfied and had, because of such dissatisfaction, designated the respondent as their bargaining agent. It follows, as night the day, that without such knowledge they could not know that a labor dispute existed nor, indeed, would a labor dispute normally come into being without some dissatisfaction on the part of the employees. No dispute of any kind or character can exist unless the parties said to be involved know that there is actually disagreement between them.

Moreover, it is the duty of the employer to treat only with the employees' true representative and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. In *Texarkana Bus Co.* v. *National Labor Relations Board,* 119 F. 2d 480, the court stated, and we quote with approval:

> "The employer can not be required to devote his time to negotiating with every individual claiming to represent a bargaining unit, and can not be charged with unfair practice in this regard unless there is presented to him evidence of a substantial character showing that the representative is in fact an authorized bargaining agency."

Although the court was there dealing with the National Labor Relations Act which *does not* "require an employer to bargain collectively with a union which has not been designated by a *majority* of the employees in an appropriate unit" (italics supplied), nevertheless the rationale of the opinion in that case is equally applicable here. This is so because there is no rule, regulation or law of this State of which we are cognizant which requires an employer to bargain collectively with a union which has not been designated by at least *some* of the employees in an appropriate unit. The Circuit Court of Appeals of the Eighth Circuit in the last cited case said, and we again quote with approval:

> "As the employer must act at his peril in recognizing a

representative, common prudence dictates that he refrain from acting until satisfactory proof is produced that the representative in fact speaks for a majority of the employees." 119 F. 2d 480, 484.

It is deemed appropriate to observe that we have outlined *prerequisites* to lawful picketing and it is not sufficient to establish, even in court, after picketing is a reality that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or, for that matter, a majority of the employer's employees.

We hold herein that as prerequisites to lawful picketing the union must establish by some evidence of substantial character that at least some of the employees have chosen it as their representative and "afford to the employer a fair opportunity to engage in negotiations", any pronouncement in the *Cothron* case to the contrary notwithstanding. We might add that we deem it necessary in order to afford to the employer a fair opportunity to engage in negotiations that the labor organization inform the employer of the subjects intended for negotiation.

The picketing of petitioners' places of business by the respondent union under the facts and circumstances of these cases and upon the basis that petitioners refused to negotiate with the union is the unlawful use of economic pressure to coerce the petitioners into negotiations with an alleged agent who failed and r fused as required by law and just dealing timely and appropriately to establish his authority. Hence the picketing is for an unlawful purpose.

Respondents, however, say the petitioners knew that certain organizers, particularly the respondent Mr. David Herman, had attempted to persuade the employees to designate respondent union as their bargaining agent or to join the union, as is evidenced by the fact that the employers endeavored to dissuade the employees from taking either action. Such circumstance falls far short of establishing as a matter of fact that the employees had pursued either course and it assuredly does not prove that the employers knew that the employees, or any of them, had actually so designated the union or had joined it.

This record paints a picture not of employees exercising their right to "self-organization" or their right to "bargain collectively

through representatives of their own choosing" but, on the contrary, limns one of two labor organizers coming to Miami Beach early this year, organizing a local labor union, and attempting for a period of two to three months, as they had every right to do, to persuade petitioners' employees that they were not being treated fairly in the matter of hours, wages and conditions of work, and that they should therefore designate the union as their bargaining agent or join the union or do both. After failing to so persuade no more than an insignificant number of such employees that they were being treated unfairly, as is established by the designation cards introduced in evidence, they immediately resorted to the use of the coercive effect of picketing without either of them first establishing by any evidence substantial in character that the respondent union in truth and in fact had been designated as the bargaining agent of any employees of the petitioner. Thereafter these men, who cannot be said to have given the employers a fair opportunity to negotiate since they gave said employers no substantial evidence of the union's authority to represent any of the employees, arranged for and had the picket lines thrown up for the obvious purpose of forcing the employers to cause their employees to designate the union as their bargaining agent and perhaps to join the union. That picketing carried on under such circumstances is unlawful cannot be gainsaid. It falls within the "unlawful purpose" doctrine of *Miami Typographical Union* v. *Ormerod,* 61 So. 2d 753.

We hold that the picketing in these cases was begun by respondents without first having submitted to the petitioners competent substantial evidence of their authority as alleged bargaining agents, which caused the picketing to be unlawful, and that the picketing was carried on for an unlawful purpose.

It follows that the petitions for certiorari should be granted and the challenged orders quashed.

It is so ordered.

DREW, C. J., TERRELL AND SEBRING, J. J., CONCUR.

Fourth Phase—Versailles Opinion

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955, SPECIAL DIVISION A.

CASE NO. 26,798

R. S. LEVY: DANIEL LIFTER: AND J. J. LANSBURGH AS TRUSTEE FOR THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST, AND THE LEONARD LANSBURGH TRUST,

Petitioners,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, OF THE AMERICAN FEDERATION OF LABOR, AND DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MICHEL, INDIVIDUALLY AND AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

Opinion filed December 14, 1955.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR DADE COUNTY, ROBERT L. FLOYD, JUDGE.

PER CURIAM.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the Circuit Court for Dade County in said cause bearing date September 22nd, 1955, denying petitioner's prayer for temporary restraining order against the respondents and the same having been considered, it is ordered that Writ of Certiorari be and is hereby awarded and the said order is reversed with directions to enter the injunction order prayed for on authority of Boca Raton Club, Inc. et al. vs. Hotel Employees Union Local No. 255, (A. F. of L.) et al., 83 So. 2d 11 (Fla.).

DREW, C. J., TERRELL, ROBERTS and O'CONNELL, JJ., CONCUR.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1956, SPECIAL DIVISION B.

CASE No. 26,880

THOMAS JEFFERSON, INC., A FLORIDA CORPORATION,
Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL), DAVID HERMAN, AS DIRECTOR OF ORGANIZATION OF SAID LOCAL, CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MISCHEL, INDIVIDUALLY AND AS BUSINESS OFFICERS AND AGENTS OF SAID LOCAL,
Respondents

Opinion filed January 13, 1956.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR DADE COUNTY, WILLIAM A. HERIN, JUDGE.

THORNAL, J.:

Petitioner, which is the owner of a Miami Beach Hotel named the San Marino, seeks reversal of a portion of an interlocutory order of the Chancellor appointing a commissioner to hold an election of hotel employees to ascertain whether respondent Union is the designated bargaining agent of the employees.

This case is another in a series of cases resulting from the picketing of Miami Beach hotels. See Sax Enterprises v. Hotel Employees Union Local No. 255 (A. F. of L.), Fla. 1955, 80 So. 2d 602; Boca Raton Club, Inc. v. Hotel Employees Union, Local No. 255 (A. F. of L.), Fla. 1955, 80 So. 2d 680. Typical of the other cases, petitioner filed its complaint against the respondents seeking an injunction against picketing activities of the respondents, alleging that the picketing was done for an unlawful purpose, to-wit, to compel non-union employees to join the union and desig-

nate it as their bargaining agent in dealing with the employer hotel. Picketing started on June 15, 1955, and this is the crucial date to bear in mind. The Chancellor entered an interlocutory order enjoining picketing at the San Marino Hotel until further order of the court. The whole problem revolves around the factual determination as to whether the respondent union actually in fact represents the employees of the petitioner hotel.

The Chancellor found that he could not determine the existence or non-existence of this fact from the evidence before him and by his order appointed a commissioner "for the sole purpose of ascertaining the foregoing facts (whether the union was the designated bargaining agent of the hotel employees) for the benefit of this Court, within 30 days from the date of this Order (to) cause an election by secret ballot to be held by the employees of plaintiff as of June 15, 1955, who come within the jurisdiction of the defendant Union, to determine the free choice of said employees as to their representation by defendant Union in the matter of labor-management relations; . . ."

By petition for writ of certiorari the Hotel challenges the correctness of that portion of the order appointing a commissioner to hold a secret election. Our examination of the record and exhibits shows that according to petitioner's exhibit 13, the hotel had 29 employees on June 15, 1955, that of these 29 employees, 20 were in the classification served by the respondent union, to-wit, bellmen, elevator operators, housekeepers, maids, housemen. The Union admits that it does not serve employees such as bookkeepers, typists and management employees. Respondents' Exhibit A consists of 28 so-called "white cards" signed by various individuals designating the respondent Union as its bargaining agent. Exhibit A also includes 20 so-called "yellow cards" signed by various individuals designating the "Miami Hotel Trades Council," allegedly consisting of affiliates of the American Federation of Labor, as their bargaining agent. A careful comparison of the names appearing on the 48 cards constituting Exhibit A shows that they include only 3 of the names of petitioner's employees who would be served by the respondent Union appearing on plaintiff-petitioner's Exhibit 13.

In our opinion in Sax Enterprises v. Hotel Employees Union Local No. 255 (A. F. of L.), 80 So. 2d 602, we held:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. *In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative,* Treasure, Inc., v. Hotel & Restaurant Employees and Bartenders' Union, supra, *and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations.* See North East Texas Motor Lines, Inc., v. Dickson, 148 Tex. 35, 219 S.W. 2d 795." (Emphasis ours.)

In the matter now before us the petitioner who sought the injunction below brought in a list of its employees as of the date the picketing started, identified them according to the nature of their employment and showed that only 3 of them had designated the respondent as their representative. This shifted to the respondent the burden of going forward with the evidence to establish that it was in fact the authorized representative of the employees of the petitioner in order to justify the respondent in demanding that the petitioner bargaining with it as the labor-management representative of the employees. In order to carry this burden the respondents then produced the 48 cards identified as Respondents' Exhibit A and these cards show that only 3 of the employees named by petitioner are affiliated with the respondent Union, according to respondent's own exhibit. Each party doubts the other's records but on this appeal neither party has cited to this court any authority for the appointment of a commissioner to hold an extra-legal secret ballot in order to produce evidence for the consideration of the court in a matter pending in litigation before it.

It was the responsibility of the litigants to produce the evidence sufficient to enable the court to arrive at a proper judgment. *If there is any doubt about the accurateness or authenticity of the*

list of employees produced in evidence below by the petitioner as its Exhibit 13, it would have been a very simple matter to have subpoenaed its payroll records and ascertain the facts from the original. The procedure that was followed, to-wit, the appointment of a commissioner to hold a so-called secret election so far as we can determine has no precedent either in labor management litigation or for that matter within the traditional equity procedures heretofore recognized by this or any other court. No precedent has been cited by either party to this appeal. Such procedure obviously deprives both parties of the established right of cross-examination and the confronting of witnesses as well as the compelling of witnesses to testify under oath. *If the Chancellor desires further evidence, certainly the rules make available to him appropriate processes for obtaining it either by the compulsion of the appearance of witnesses before him together with the subpoenaing of exhibits or by the reference of the matter to a Master to hear the testimony under oath in the presence of opposing counsel and parties who then have the right of cross-examination.* Respondent's claim for the desirability of secrecy to protect the Union members against alleged "black-listing" loses vitality when we note that respondents themselves have actually filed in this cause membership cards signed by their alleged members.

If the facts have occurred since the filing of the complaint which were not included in the original pleadings and which constitute additional grounds either for complaint or as defenses to the complaint, our present rules make adequate provision for an orderly procedure to bring these matters to the attention of the Chancellor. The record in this case at least indicates grounds for suspicion that all parties involved were sparring around in an effort to gain some tactical advantage rather than a straight-forward procedural effort to enable the able Chancellor to arrive at the right and truth of the situation that they presented to him by their pleadings. The parties should present their own case and they should not impose upon the Chancellor the burden of presenting it for them.

It appears to us that in the series of cases involving this particular problem which has already been heard by this court on several occasions, the rules governing the presentation and disposition of

the litigation have been adequately and clearly set forth and we can frankly find no justification for the continuation of tactics which can only result in delay and ultimate harm to *all parties concerned*, including the public which we judicially know has a vital interest in the Miami Beach hotel industry.

The decree is approved insofar as it provides "picketing at the San Marino Hotel shall be and the same is hereby enjoined until further order of this Court."

In other respects the petition for certiorari is granted, the decree appealed from is quashed, and the cause is remanded for further proceedings consistent with this opinion.

DREW, C. J., TERRELL AND ROBERTS, JJ., CONCUR

CRAWFORD, ASSOCIATE JUSTICE, heard the oral argument but did not participate in opinion or judgment.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957 EN BANC

CASE NO. 28,074

FONTAINEBLEAU HOTEL CORP., A FLORIDA CORPORATION,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MICHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

Opinion filed February 1, 1957.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF DADE COUNTY, WILLIAM A. HERIN, JUDGE.

TERRELL, C. J.

December 21, 1955, petitioner filed a sworn petition in the Circuit Court of Dade County on the basis of which temporary restraining order was directed to respondents commanding them to desist from picketing the Fontainebleau Hotel. January 30, 1956, after answer of defendents was filed, the cause came on for hearing before the chancellor; evidence was taken and the temporary restraining order was dissolved. We are confronted with a petition for certiorari to review and quash the order dissolving the temporary injunction.

Petitioner first contends that respondents did not represent its employees, that petitioner was not notified of any labor grievance prior to the picketing, nor was it given the object to be accomplished by the picketing or a reasonable time to accept or reject the union demands.

Sections 447.01 (1) (2), 447.03 and 447.09 (3) (4) (11), Florida Statutes 1955, are relied upon to support petitioner's

grounds for relief. Section 447.01(1)(2) is a statement of policy with reference to the regulation of labor unions, their agents, employees and other representatives. Section 447.03 guarantees laborers the right to organize and join a union, to bargain collectively, including acts for mutual aid and protection. Section 447.09(3)(4)(11) preserves the right of franchise but makes it unlawful to participate in any strike, walkout or cessation of labor or continuation thereof unless authorized by a majority vote of the employees affected. It requires elections to strike or cease work to be by secret ballot. It is made unlawful to intimidate a workman or his family in the enjoyment of these rights, to picket his domicile or to injure his person, property or that of his employer or family. Collectively, these statutes require that all employer-employee relations be conducted decently and in order.

At the outset it is shown that the trial court was confused about what this court had in mind in Boca Raton Club v. Hotel Employees Union, Local No. 255 (A. F. of L.), 83 So. 2d 11, when it stated that the union, prior to strike, should show that it represented "at least some of the employees." The reason for the expression "at least some of the employees" was that in that case it was not shown that the union represented any of the employees prior to the strike. In the case last cited the court contrasted Florida requirements and those of the Federal law wherein a majority of those belonging to the union is required to precipitate a strike. The quoted expression was a mere expletive of the situation before the court and has no relevance to this case.

It is not amiss to point out that there are circumstances in which the right to picket is an aspect of freedom of speech and may not be infringed. A. F. of L. v. Swing, 312 U.S. 321; Whitehead v. Miami Laundry Co., 160 Fla. 667, 36 So. 2d 382, and others. In Sax Enterprises v. Hotel Employees Union, Local No. 255, Fla. 80 So. 2d 602, and in other cases, we have called attention to the law placing limitations on picketing by requiring that it be peaceful, that the union must show that it represents the employees, that the employer must have been told of the object to be accomplished by the picketing and afforded an opportunity to negotiate whatever differences there may be or impediments there are to accomplish the objective of the picketing.

Sixth Phase—Fontainebleau Opinion

At the trial and on appeal the law governing picketing and that governing the right to strike were confused. As to the latter, Section 447.09(3), Florida Statutes, as well as the Federal law, require that strike be approved by a majority vote of the employees to be governed thereby. No such requirement exists as to picketing. It cannot be initiated, however, for spite or for reasons other than to accomplish a lawful purpose and then the law, order and decency require that it be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public. If attempted in an atmosphere of violence, insinuation, bad faith, deception, farce or damned-if-I-don't-show-you spirit, it would not be recognized as a means of adjusting labor disputes. Satisfactory, fair or equitable judgments never emerge from such an atmosphere. Picketing conducted in such an environment, as we stated in Sax Enterprise v. Hotel Employees Union, Local No. 255, supra, is nothing more than a "species of coercion traveling under the guise of free speech for the purpose of enjoying constitutional immunity." It was widely at variance from the pattern confronting the court in A.F.L. v. Swing, supra.

The correspondence conducted between petitioner and respondents, as well as the evidence taken at the trial, exhibit bad faith, a lack of respect one for the other, a tense feeling between them and a disposition to haggle over the issues if there were any. We find little or no evidence to support the truth of the legend borne on the placard carried by the picketers, "This hotel unfair". Hotel Employees Union, Local 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." For all the record shows, the placard was a misrepresentation and was unfair to the petitioner. There is showing of intimidation by representatives of respondents to impede petitioner's employees in going to work. The picket line was thrown up before there was showing of any lawful grievance against petitioner and the picketers are not shown to have refrained from abuse to patrons entering the hotel or laborers working there. There is showing that about 200 of the approximately 1,000 employees of the hotel signified the union as their bargaining agent prior to December 21, 1955, the day picketing started.

The correspondence between petitioner and respondents was

commenced November 30, 1955, and was concluded January 6, 1956. In sum it charges: (1) That the picket line was thrown up without any pre-existing honest or forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute existing between the parties. (2) The picket line was thrown up before affording any fair opportunity to engage in negotiations. (3) Prior to picketing it was not shown by evidence of substantial character that the union was the authorized bargaining agent of the employees. (4) Under the law of this state the employer is required to negotiate with the true representative of the employees and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. It is not sufficient to establish even in court, after picketing is a reality, that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or for that matter a majority of the employees. Boca Raton Club, Inc. vs. Hotel Employees Union, Local No. 255, supra. (5) Prior to organizing a picket line, respondents failed to furnish evidence of substantial character that any employees had chosen it as their representative and offered the employer no opportunity to negotiate. (6) The employer has never been informed of the subject for negotiation, not only that, but respondents have attempted to coerce employer to participate in conduct prohibited by law. (7) Respondents do not represent the employees of the petitioner as their bargaining agent.

Respondents deny or evade these charges but the evidence supports most of them. The law of this state regulating picketing was designed to protect the laborers, the proprietors, and the public. All have a stake in the proper regulation of employer-employee relations. This court has in several cases discussed the prerequisites to good labor relations. Under the statute, Section 447.09(12)(13) and other provisions thereof, picketing contemplates a labor dispute; it should not be conducted beyond the area of the industry or business where the labor dispute arises; it should not be done by force or violence; nor should it be done in such a manner as to prevent ingress and egress to and from any premises and it must be done in a peaceful manner. If done in aid of a strike, walkout,

cessation of work or continuation thereof, it must be approved by a majority vote of the employees. Absent these requirements it is not necessary to determine at this time what percentage of the employees should participate in lawful picketing.

From a study of the record it is not conclusively shown that any bona fide labor dispute existed in petitioner's hotel. Only two of its employees participated in the picketing; in fact they did not know of the purpose of the picketing. It is not shown that there was any dissatisfaction with working or other conditions at the hotel. The record as a whole indicates that the picketing was precipitated by the union for the purpose of requiring both the petitioner and its employees to recognize it as the representative of said employees. It was accompanied by acts of violence or near violence condemned by the statute. The gravamen of the picketing is not shown to have originated within the confines of petitioner's hotel.

When a bona fide industrial grievance arises, legal and orderly picketing may be indulged in, but the law places limitations on it. It condemns violence, manhandling, the use of the club or the blackmariah. It provides an orderly process to conduct it and it contemplates that both parties will cooperate to bring about a solution advantageous to all concerned.

Nothing contained herein shall be construed as prohibiting any number of employees less than a majority from engaging as individuals (as distinguished from representatives of a labor union) in lawful picketing for the purpose of truthfully acquainting the public with their grievances, provided that prior thereto they shall have complied with the prerequisites to lawful picketing set forth in our opinion in Sax Enterprises vs. Hotel Employees Union Local No. 255, supra. In this opinion we are dealing exclusively with the right of a labor union which has been designated as the bargaining agent of less than a majority of employees of a given employer, and we hold merely that the union as such, and as distinguished from the individual employees, may not, under the circumstances presented here, engage in picketing by use of the members of the union as pickets who are not employees of the subject employer.

We are convinced that so much that the law requires as a pre-

requisite to picketing was ignored in this case that respondents are entitled to no relief at the hands of this or any court. It follows that certiorari should be, and is hereby, granted and the judgment appealed from is quashed.

It is so ordered.

HOBSON, DREW, THORNAL and O'CONNEL, JJ., CONCUR

THOMAS and ROBERTS, JJ., not participating.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957, DIVISION B.

CASE NO. 28,239

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,

Appellants.

vs.

SAX ENTERPRISES, INC.,

Appellee.

Opinion filed March 15, 1957.

AN APPEAL FROM THE CIRCUIT COURT FOR DADE COUNTY, CHARLES A. CARROLL, JUDGE.

PER CURIAM.

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

TERRELL, C. J. HOBSON, DREW and O'CONNELL, JJ., CONCUR.

(Per Curiam opinions identical, except for the caption, were issued on March 15, 1957, in each of the other three cases as to which review is here sought.)

APPENDIX B

ASSIGNMENTS OF ERROR

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

IN CHANCERY NO. ————

SAX ENTERPRISES, INC., A FLORIDA CORPORATION,

Plaintiff

—versus—

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL) et al.,

Defendants

ASSIGNMENTS OF ERROR.

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214, page 232, of the records of this Court, from which they have appealed.

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your de-

fendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. BROWN
GRAMLING & GRAMLING
Solicitors for Defendants
By *Carrington Gramling*